

REMARKS

The application has been amended to place it in condition for allowance at the time of the next Official Action.

Claims status

Claims 1, 2, 8-11, 13, 16 and 20-28 are presented for consideration.

35 USC 112, second paragraph rejection

Claim 23 was rejected under 35 USC 112, second paragraph as being indefinite. That rejection is respectfully traversed.

Claim 23 is amended to recite a second femoral insert and a second tibial insert to distinguish over the first femoral insert and first tibial insert of claim 21. See, for example, Figure 3 and first and second femoral inserts 8A, 8B and first and second tibial inserts 10A, 10B. The above rejection is believed sufficient to address the rejection and withdrawal of the same is respectfully requested.

35 USC 101 rejection

Claims 21-28 were rejected under 35 USC 101 as being directed to non-statutory subject matter. That rejection is respectfully traversed.

Claim 21 is amended to clarify that the knee is not part of the invention and rather the device is used to tension a knee in use. Accordingly, withdrawal of the rejection is respectfully requested.

35 USC 103 rejection

Claims 1, 2, 8-11, 13, 16 and 20-28 were rejected under 35 USC 103(a) as unpatentable over ECKHOFF 5,669,914 in view of REHDER 4,865,606. That rejection is respectfully traversed.

The position set forth in the Official Action is that it would have been obvious to modify the plate of ECKHOFF in order to allow for pure rotational movement of the knee and prevent lifting.

Claim 1 is amended to clarify that the movement is a flexion movement. That is, rotation around an axis perpendicular to the tibia and femur (see pages 1-3 and page 10, lines 18-28).

The disclosed device of ECKHOFF is an alignment device that temporarily aligns the tibia with the femur of a patient during knee surgery so that a prosthetic knee component can be placed into the patient.

As noted in the Official Action, this device is a rotation alignment device. However, the rotation disclosed in ECKHOFF is with respect to rotation of the guide component 50 with respect to post 90. That is, rotation of the tibia around a

longitudinal axis of the tibia for aligning the tibia with the femur. There is no flexion movement of the device of ECKHOFF.

The device of REHDER relates to the prosthetic knee component itself, a prosthesis that ECKHOFF might insert (see column 10, lines 11-16). However, features of the device of ECKHOFF and those of the prosthesis (of REHDER) are not combinable in the manner suggested.

Moreover, even if one were to consider the proposed combination of references in the first instance, the proposed modification would render ECKHOFF unsatisfactory for its intended purpose.

ECKHOFF discloses a femoral leaf 40 including a femoral ledge 70 that extends at right angles to the leaf 40 (see figure 1 and column 8, lines 13-17). As disclosed on column 9, lines 18-22, the ledge 70 provides a surface for the femur to rest against.

Based on this ledge and the anti-rotation plate 40 having pegs 62 (column 9, lines 14-17), the device of ECKHOFF could not be configured to flex without rendering ECKHOFF unsatisfactory for its intended purpose of keeping the femur against the ledge. Rather, as set forth above any rotational movement in ECKHOFF is around a longitudinal axis and could not be based on the plate of the device including sliding means that enable the femoral implant or bone to slide when the knee joint is flexed.

In view of the above, it is apparent that even if one were to consider the proposed combination of references in the first instance based on the disparate devices, it would not have been obvious to one of ordinary skill in the art to modify ECKHOFF in the manner suggested, because even if such modification were possible, doing so would render ECKHOFF unsatisfactory for its intended purpose.

Thus, the proposed combination of references does not meet claim 1.

Independent claim 21 includes similar features to those of claim 1 and the analysis above also applies to claim 21. The dependent claims are believed to be patentable at least for depending from an allowable independent claim.

In view of the present amendment and the foregoing remarks, therefore, it is believed that this application has been placed in condition for allowance, and reconsideration and allowance are respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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